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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

SEP 29 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of Sections of	)	
the Cable Television Consumer	)	MM Docket No. 92-266
Protection and Competition Act	)	
of 1992	)	
	)	
Rate Regulation	)	

To: The Commission

COMMENTS OF TIME WARNER CABLE IN RESPONSE TO THE FIFTH NOTICE OF PROPOSED RULEMAKING

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Date: June 29, 1994

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List A B C D E

TABLE OF CONTENTS

Page

SUMMARY

The Commission's new going forward rules fail to provide adequate financial incentives for cable operators to add new regulated services. In the past, cable operators and programmers have shared the costs and risks associated with the launch of a new cable service. A programmer often initially offers the service for a fee below its costs, which it typically increases to cover its original start-up costs and to fund new and improved programming once a service becomes established. The Commission's overly-conservative 7.5 percent mark-up and flat rate "adjustment factor" (that, in most cases, amounts to only one or two cents per added channel) will deter new investment and stifle innovation. Moreover, because the adjustment factor is derived from the Commission's benchmark formula, based on past rates, not costs, it is inherently deficient as a mechanism for recovering the additional, non-programming costs.

The Commission should adopt a revised going forward approach under which cable operators adding new services could pass through programming costs plus either a flat fee incentive factor or a realistic percentage mark-up. Time Warner suggests the adoption of an incentive mark-up of 25 percent or $0.25 per channel, whichever is greater, above programming costs.

It also is critically important that the Commission address the issue of a la carte service offerings. Time Warner believes that where a la carte services are offered without package discounts, the 1992 Cable Act prohibits rate regulation, and the only regulatory restriction should be that services not

previously offered be affirmatively marketed. Where the services are also offered as part of a collectively discounted package of a la carte services, the discount rate must be no greater than 50 percent of the sum of the individual channel prices (including any required equipment), unless a higher discount can be supported by past practices.

The Commission should confirm that existing a la carte offerings introduced prior to March 31, 1994 will be deemed valid if they meet the two-part test announced by the Commission in April 1993. Many cable operators moved services previously offered on tier to a per channel basis, as well as in discounted packages, in response to (and in reliance on) statements in the Cable Act's legislative history and the Commission's decisions implementing the Act encouraging the "unbundling" of cable program services. The Commission also needs to clarify both the scope of the liability faced by a cable operator in a case where the operator's a la carte offerings are found to be defective and the types of actions that the operator can take to cure the defects identified and thereby mitigate its liability. The Commission, and not local authorities, should resolve the status of a la carte service offerings.

The Commission should also address other procedural aspects of its rules that create disincentives to the addition of new services to regulated tiers. Cable operators will remain hesitant to add services to the basic tier so long as local governments can delay the implementation of the going forward

rate adjustment for months, or to non-basic tiers if a single complaint about a going forward rate adjustment will trigger review not just of the adjustment, but of previously unchallenged rates as well. The Commission also needs to adopt uniform national negative option standards to ensure that the launch of new regulated services on existing tiers is not impeded by locally-imposed affirmative marketing requirements.

The Commission should not artificially limit the development of regulated services on an expanded system with capacity beyond 100 channels. In establishing a rate methodology for such services, the Commission cannot reliably extrapolate from its benchmark table and efficiency curve, which reflect systems with less than 100 channels, the cost of existing delivery technologies, and a methodology based upon questionable assumptions. Nor should the Commission simply cap rates at the 100 channel level unless an operator justifies a higher rate through a cost-of-service showing, an approach that would create an incentive against the use of expanded channel capacity for regulated services and again perpetuate a flawed methodology. Time Warner believes that the most effective and sensible approach would be to allow recovery of the cost of upgrades which were (1) required or approved by the franchise authority and (2) expand capacity beyond 100 channels without need for a cost-of-service showing.

The 1992 Cable Act evidences no intent to regulate rates for cable service provided to commercial establishments. The statute

limits rate regulation to cases where there is no "effective competition," which is defined in terms of "households," with no mention of commercial establishments. Likewise, the Commission has adopted the Census definition of "household," which requires a full-time residence.

In excluding commercial establishments from the regulation of cable service, Congress undoubtedly recognized that home use of cable service is vastly different from business use. Home subscription is content driven; its value is derived from the information and entertainment provided for residents' personal use. Commercial consumption of cable, on the other hand, is profit driven, its value derived from the increased business that accompanies cable reception.

Furthermore, many businesses dictate the exact programming mix, and individually negotiate the price, for the cable service they receive from Time Warner. If Time Warner were prohibited from tailoring such services, or charging different prices depending on the services provided, these businesses would be deprived of the benefits of the competitive choice to obtain service from Time Warner.

Should the Commission determine that it is appropriate to regulate commercial rates, however, such regulation should be unrelated to the regulation of residential cable service. Since businesses earn excess profits directly from their reception of cable service, a reasonable rate for commercial cable subscribers is probably much higher than a reasonable ("benchmark") rate to

residential subscribers. Certainly, it would be inappropriate to require that commercial rates be uniform, along with residential rates. Indeed, since commercial subscribers have widely disparate uses of cable service, reflecting widely disparate value to such subscribers, commercial rates themselves should not be uniform.

Finally, any regulation of commercial rates should be at the local franchising authority's option. This would reflect Congressional intent regarding basic rates, as well as the reality that many cities would not desire to regulate commercial rates, and therefore should not be forced to do so.

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To: The Commission

COMMENTS OF TIME WARNER CABLE IN RESPONSE TO THE FIFTH NOTICE OF PROPOSED RULEMAKING

Time Warner Cable ("Time Warner"), by its attorneys, hereby submits its comments in response to the Commission's Fifth Notice of Proposed Rulemaking ("Fifth Notice").[1] Time Warner, a division of Time Warner Entertainment Company, L.P. ("TWE"), operates cable television systems through the country.[2]

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[1] Implementation of Rate Regulation Sections of the Cable Television Consumer Protection and Competition Act of 1992, Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking (hereinafter referenced as "Second Order on Reconsideration" or "Fifth Notice," as appropriate), MM Docket No. 92-266, FCC 94-38 (rel. March 30, 1994).

[2] TWE is the plaintiff in several lawsuits challenging the validity of various provisions of the 1992 Cable Act and various Commission regulations promulgated pursuant thereto. Nothing herein should be deemed to concede the legality of any provisions subject to any such pending or future legal challenge.

I. ADDITIONAL INCENTIVES ARE REQUIRED TO PROMOTE CARRIAGE OF PROGRAMMING SERVICES ON REGULATED SERVICE LEVELS.

In its Second Order on Reconsideration, the Commission (after nearly a year's delay), articulated the methodology to be followed in adjusting regulated cable rates on a "going forward" basis.[3] Even as it was adopting these long-awaited rules, however, the Commission was acknowledging that it needed to "carefully monitor the impact" of its going forward methodology;[4] accordingly, in the Fifth Notice, the Commission has sought additional input as to whether and how the methodology might be revised.[5] In this section, Time Warner addresses several significant deficiencies in the existing going forward methodology and offers proposals for changing the rules, both substantively and procedurally, so as to better achieve the Commission's stated regulatory goals.

A. Deficiencies In The Going Forward Rates.

The Commission expressly stated that one of the goals of its going forward methodology was to "allow cable operators to grow and develop new facilities and services, including new and innovative regulated program services."[6] Unfortunately, it

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[3]Second Order on Reconsideration, supra at ¶¶ 242-49.

[4]Id. at note 345.

[5]Fifth Notice, supra at ¶ 256.

[6]Second Order on Reconsideration, supra at ¶ 238. See also Fifth Notice, supra at ¶ 256.

quickly has become apparent that the Commission's rules fall far short of the mark in achieving this goal. Indeed, the difficulties faced by programmers, particularly start-up programmers, in obtaining carriage on cable systems has been widely reported.[7]

The crux of the problem with the new rules is that they fail to provide adequate financial incentives for cable operators to add new regulated services. When a cable operator adds a new service to its line-up, it weighs a variety of considerations. For example, an operator must consider not only the costs of obtaining and distributing the service, but also the appeal the service will have to subscribers and the other uses to which the system's channel space might be put.

In the past, cable operators and programmers generally have sought to share the costs and risks associated with the launch of a new cable service. One way of doing this has been for the programmer initially to offer the service to the cable operator for a fee that is below the programmer's costs.[8] While the operator thus takes on the risk of carrying the new service instead of making some other use of its channel capacity, the operator also stands to benefit from most of the additional

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[7]See, e.g., K. Mitchell and R. Granger, "Operators Give New Networks Little Attention," Multichannel News, March 7, 1994, at 3.

[8]Another reason programmers have offered new services at reduced initial rates has been to encourage wider distribution which might allow the programmer to recover a greater proportion of its costs through advertising.

subscription revenues that will be produced if the operator's assessment of the service's value to subscribers is correct. As the service becomes more established, however, the programmer may begin charging higher fees, seeking to recover its start-up losses. Even if the operator is able to recover most of these increased costs, which is by no means certain, it generally will experience a diminished profit margin on the service.

This shared approach to the costs and risks of a new service has benefitted cable operators, cable programmers, and the viewing public, as evidenced by the launch of dozens of new program networks in recent years. Yet, the Commission's new going forward rules make the continued sharing of costs and risks impossible. This is because the new rules limit a cable operator adding a new service to (i) the recovery of the cost of the programming plus a nominal 7.5 percent mark-up and (ii) a flat rate "adjustment factor" that, in most cases, amounts to only one or two cents per added channel.

The 7.5 percent mark-up and the adjustment factor are plainly inadequate. The Commission itself has acknowledged that the 7.5 percent mark-up represents a "cautious" approach. In the extremely risky realm of adding new services, however, an overly conservative approach deters new investment and stifles innovation. Moreover, the adjustment factor is derived from the Commission's benchmark formula -- a formula that is based on past rates, not costs. Consequently, the adjustment factor is inherently deficient as a mechanism for recovering the

additional, non-programming costs associated with the addition of new regulated services.

The extent to which the existing two-part going forward approach fails to meet the Commission's stated goal of "encouraging infrastructure development and growth of programming"[9] can be readily demonstrated. As indicated, new cable networks typically are offered to cable operators at a relatively low cost. With a 7.5 percent mark-up, even a network costing $0.10 per subscriber would produce less than one cent return for the cable operator. If the system already has more than 46 regulated channels, the programming adjustment factor will add another $0.01, for a total pass through of less than two cents over the cost of the programming. Given the costs associated with preparing, printing and distributing mandatory subscriber notices regarding the change in programming and rates, with advertising and marketing the new service, with changing rate cards and program guides, and with adding additional headend equipment, it is clear that cable operators will not add new services under such circumstances. Indeed, in the foregoing example, it would take over 14 months just to recover the postage costs incurred in sending the required subscriber notices!

Fortunately, there are steps the Commission can and should take to rectify the problems created by the current going forward regime. For example, the Commission can and should adopt a revised going forward approach under which cable operators adding

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[9] Fifth Notice, supra at ¶ 256.

new services could pass through programming costs plus either a realistic percentage mark-up or a flat fee incentive factor. Time Warner suggests the adoption of an incentive factor of 25 percent or $0.25 per channel, whichever is greater.

This approach is both flexible and fair. For most new services, the incentive factor mark-up will be $0.25 and the total pass through (programming cost plus mark-up) will be less than $0.50 -- an amount comparable to the per channel rates currently charged by most cable operators. At the same time, operators will not be precluded from experimenting with the addition of more costly networks -- such as regional sports networks -- to regulated service tiers.

Finally, in revising its going forward rules, the Commission needs to consider the incentive factor mark-up applicable to existing services. As noted, once a service becomes established, it typically increases its fees, both to cover its original start-up costs and to fund new and improved programming. Operators need to be able to pass through these cost increases. They also need a mark-up of at least 15 percent on these increases. The current 7.5 percent mark-up simply does not provide an adequate return to justify the continued use of an increasingly valuable channel for a regulated service. At a 15 percent return, the operator's margin from carrying the service may diminish over time, but nevertheless should be more likely to

encourage the development and production of new and original programming on established cable services.[10]

B. Clarification Of Rules Governing A La Carte Offerings.

Much of the attention regarding the Commission's going forward methodology has focused on the size of the rate adjustments permitted by the rules. If the Commission's goal is to encourage the addition of new programming, however, it must do more than simply revise its going forward rate adjustment rules. It also is critically important that the Commission address the issue of a la carte service offerings.

Clarifying the circumstances under which cable operators may offer services on an a la carte basis is pertinent to the going forward issue for several reasons. First, as more and more channels are added to existing regulated tiers, the price of those tiers will increase. At some point, subscribers are likely to balk; therefore, offering services on a per channel basis may be the only way to retain existing subscribers. Second, even where a system has unused channel capacity, it may be configured technically in a way that limits its ability to increase the number of services offered on an existing regulated tier. For

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[10]Where an existing service is removed from a regulated tier, the rules call for a downward rate adjustment. This adjustment should reflect any incentive factor mark-up that the system actually has added to its rates with respect to that particular channel. If a channel carried as of March 31, 1994 is dropped (or moved to another tier), the adjustment should reflect the cost of that channel as of March 31, 1994 plus any subsequent increases passed on to subscribers, but no additional incentive factor amount should be deducted if it was never added due to the initial carriage of that particular service.

such systems, moving existing tier services to a la carte may create "headroom" on the tier for other services. Cable operators cannot make rational decisions as to whether and how to give subscribers the benefit of the additional choice provided by the creation of new a la carte service offerings without knowing the governing rules.[11]

1. "New" A La Carte Offerings.

As indicated, cable operators may seek to begin offering services on an a la carte basis as a way of addressing "headroom" limitations or of avoiding the creation of unduly large and expensive tiers. Operators also may need to offer services on an a la carte basis in response to competition from other distributors (such as TVRO, DBS, and video dialtone) who are (or shortly will be) offering subscribers the choice of obtaining most cable programming services either on a per channel basis or as part of one or more packages of service.[12]

In its Second Order on Reconsideration, the Commission adopted a set of guidelines for evaluating existing a la carte service offerings.[13] The applicability of these guidelines to

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[11]Time Warner also fully recognizes that the Commission should account for the interests of programmers in clarifying the a la carte situation, with due accord to contractual arrangements.

[12]See, e.g., "Bell Unveils Plan For Local Cable, Video Service," Washington Post, June 16, 1994 at B13, B17 (describing Bell Atlantic proposal to allow subscribers to obtain cable services "a la carte" as well as in packages).

[13]Second Order on Reconsideration, supra at ¶ 196.

existing (i.e., pre-March 31, 1994) a la carte service offerings is discussed in the next section of these comments. Time Warner believes, however, that where cable operators commence offering services on an a la carte basis after March 31, 1994, there is no rational basis to impose any such regulatory restraints. In particular, where the services are offered on an a la carte without a discounted collective package option, rate regulation is expressly precluded by the Cable Act and the only restriction should be that services not previously offered by the system must be affirmatively marketed.[13] Where the services are also offered as part of a collectively discounted package of a la carte services, the package should be per se deemed to offer subscribers a "realistic service offering" so long as the discount rate does not exceed 50 percent of the sum of the individual channel prices (including any equipment, if required to get less than all of the services). The 50 percent test should be a "safe harbor;" discounts greater than 50 percent may be justifiable through reference to the operator's past practices or the practices of competing distributors.[14]

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[13]Thus, for example, if a system were to take three services from its basic tier and one service that had not previously been available on the system and to begin offering them on an a la carte basis for $0.45 a channel (and with no discount if all four are purchased), only the one new channel would have to be affirmatively marketed.

[14]In addition, the 50 percent test should not preclude operators from offering, on a limited-time, promotional basis, greater discounts.

Time Warner believes that imposing minimum restrictions on the introduction of new a la carte service options is consistent with Congressional intent to encourage operators to "unbundle" their services, thereby promoting consumer choice.[15] At the same time, there is little risk that the introduction of a la carte offerings after March 31, 1994 can be used to "evade" rate regulation, since changes in the number of regulated channels after that date will have no impact on a system's "initial" rates under Form 393 or Form 1200. Furthermore, consumers are protected by the Commission's rules requiring 30 days notice of any change in service and giving subscribers the right to downgrade for free within 30 days of a rate increase or tier restructuring.[16] Operators also will have to reduce the price of their regulated tiers to reflect the deletion of any channels newly offered on an a la carte basis.[17]

2. "Old" A La Carte.

In addition to clarifying the rules governing the introduction of new a la carte service offerings, the Commission needs to address the status of a la carte service offerings

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[15]See, e.g., S. Rep. No. 92, 102d Cong., 1st Sess. 77 (1991).

[16]See 47 C.F.R. §§ 76.964 and 76.980(f).

[17]This reduction is the same whether a service is moved to another tier, dropped entirely, or offered on an a la carte basis. While it is true that a cable operator might attempt to more than make up the reduction in the tier rate through its pricing of the a la carte services, it is precisely because of the options made available by a la carte service offerings that subscribers can choose to reduce their bills (and the cable operator's revenues).

introduced prior to March 31, 1994. As the Commission is well aware, the efforts made by many cable operators (including Time Warner) to bring their rates and service structures into compliance with the Commission's rules prior to the September 1, 1993 effective date involved the restructuring of existing tiers to make available on a per channel basis (as well as in discounted packages) services previously available only as part of a tier. These new service options were introduced in response to (and in reliance on) statements in the Cable Act's legislative history and in the Commission's decisions implementing the Act encouraging the "unbundling" of cable program services. For example, Congress expressly promoted greater unbundling of service offerings as a matter of federal policy on the grounds that it gives subscribers "greater assurance that they are choosing only these program services they wish to see and not paying for programs they do not desire."[18] The Commission echoed these sentiments in its April 1993 Report and Order, noting inter alia, that nothing in the Cable Act required restrictions on the movement of a channel to premium and deregulated status.[19] The

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[18]S. Rep. at 77. See also id. (unbundling "leads to more subscriber choice and competition among program services"); H. Rep. No. 628, 102d Cong., 2d Sess. 90 (1992) (accord).

[19]Implementation of Rate Regulation Sections of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking, 92-266, FCC 93-177, 8 FCC Rcd 5631 at n.1105 (rel. May 3, 1993) ("April 1993 Report and Order"). See also id. at ¶¶ 327-28 ("the rationale underlying Congress' decision to exempt from regulation per channel or per-program service offered on a stand-alone basis" is that "greater unbundling of offerings leads to more

(continued...)

Commission also endorsed the practice of offering customers the option of purchasing discounted collective packages of a la carte services on the grounds that "such discounts benefit the consumer."[20]

In its First Order on Reconsideration, released just days before the September 1, 1993 rate regulation effective date, the Commission reaffirmed that "restructuring program offerings to provide more a la carte services is not per se undesirable," adding that such arrangements "increase[ ] consumer choice, which is one of the goals of the Act."[21] Yet, the March 30, 1994 interpretive guidelines seemingly represent a shift in the Commission's position, suggesting for the first time that a la carte service options consisting of networks previously available only as part of a tier are suspect.[22] These new guidelines are creating enormous confusion and uncertainty. Operators are unclear not only as to the status of their a la carte service offerings, but also as to the impact an adverse determination will have on their entire rate and service structure. Such uncertainty regarding existing operations is anathema to the introduction of new services.

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[19](...continued)
subscriber choice and greater competition among program services").

[20]April 1993 Report and Order ¶ 327-38.

[21]First Order on Reconsideration, MM Docket No. 92-266 at ¶ 35 (rel. Aug. 27, 1993).

[22]See Second Order on Reconsideration, supra at ¶ 196.

In order to resolve this uncertainty, the Commission first should clarify the applicable standard for evaluating a la carte service offerings introduced prior to March 31, 1994. In its initial April 1993 Report and Order, the Commission indicated that a collective offering of a la carte services would not be subject to regulation as a Cable Programming Services tier if (1) the package price did not exceed the sum of the rates for the individual services and (2) each service offered as part of the package was in fact available separately and was priced so as to give subscribers a realistic option of purchasing individual channels rather than the package.[23] The Commission should confirm that existing a la carte offerings are subject solely to this two-part test.[24]

The Commission also needs to clarify both the scope of the liability faced by a cable operator in a case where the operator's a la carte offerings are found to be defective and the types of actions that the operator can take to cure the defects identified and thereby mitigate its liability. Time Warner submits that where a system's a la carte offerings fail to meet the two-part threshold test, the a la carte package may be treated as a regulated tier and the operator may be required to

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[23]April 1993 Report and Order, supra at ¶ 327-328, note 808. See also Public Notice, "Cable Television Rate Regulation Questions and Answers," Question 20 (rel. May 13, 1993).

[24]The "realistic choice" element of the test should be measured by reference to the same discount standard described above for new a la carte packages: 50 percent or less (including required equipment).

recalculate the price it charges for the package, as well as for basic and other regulated tiers and to make any necessary refunds back to the applicable initial date of regulation. However, operators with defective a la carte offerings should be given an opportunity to cure the defects through such means as repricing, altering their service structure, affirmative marketing, etc. The Commission also should establish a "statute of limitations" after which unchallenged a la carte service offerings will be immune from attack.

Finally, the Commission, and not local authorities, should resolve the status of a la carte service offerings. In this regard, Time Warner notes that local municipalities have no jurisdiction to review a la carte offerings introduced after March 31, 1994 since such offerings do not effect basic rates in any way.[25] With respect to pre-March 31, 1994 a la carte offerings, whether or not a service is deemed a legitimate a la carte offering or a regulated channel may have an impact on the initial calculation of basic rates. Nevertheless, the current arrangement described in the Second Order on Reconsideration, whereby local franchising authorities may make initial determinations regarding the status of an a la carte package subject to Commission review,[26] is unworkable. Under the

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[25]The Cable Act plainly limits the jurisdiction of local authorities to the regulation of basic service. See 47 U.S.C. § 543(a)(2)(A).

[26]Second Order on Reconsideration, supra at ¶ 198-99. See also 47 C.F.R. § 76.986.

existing approach, local officials will have strong incentives to determine that the operator's a la carte package is defective so as to be able to order lower basic rates and refunds. Moreover, local authorities will never make their determinations on an interlocutory basis if that is the only circumstance in which their decision will be subject to an automatic stay. On the other hand, if local officials are not allowed to decide the a la carte issue themselves, but can only refer it to the Commission, they not only will be much more selective in the cases they bring, but they also will have an incentive to seek resolution of the issue as early in the regulatory process as possible. As a result, the Commission will have fewer a la carte disputes to resolve than will be the case under the current scheme and the uncertainty faced by operators will be ameliorated.[27]

C. Removing Procedural Disincentives To The Addition Of New Regulated Services.

Apart from the issues of going forward rate adjustments and the establishment of a la carte service offerings, the Commission needs to address several procedural aspects of its rules that create disincentives to the addition of new services to regulated tiers. For example, cable operators are and will continue to be

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[27]If the Commission decides to continue to allow local authorities to make the initial determination regarding the validity of an a la carte offering, it should at very least modify its rules to create an automatic stay where the determination is made at the end of the rate process. Otherwise, as indicated, there is no reason for a local government ever to avail itself of the interlocutory review process. Given the provision for refunds with interest, subscribers would not be harmed by such automatic stays.

deterred from adding services to the basic tier so long as local governments can delay the implementation of the going forward rate adjustment for months. Similarly, operators will be hesitant to add services to non-basic tiers if a single complaint about a going forward rate adjustment will trigger review not just of the adjustment, but of previously unchallenged rates as well. Finally, the Commission needs to adopt uniform national negative option standards to ensure that the launch of new regulated services on existing tiers is not impeded by locally-imposed affirmative marketing requirements.

1. "Automatic" Going Forward Increases.

In its April 1993 Report and Order, the Commission indicated that going forward rate increases could be taken "automatically" upon 30 days notice to the local franchising authority.[28] The Commission further noted that local review of going forward adjustments "should be limited in scope."[29] Despite these statements, however, the Commission's rules do not currently provide for "automatic" going forward adjustments or for "limited" review.

The Commission should revise its rules to implement the "automatic" adjustment process contemplated by the April 1993 Report and Order. Under the rules as they now stand, a system adding a channel to its basic tier could be forced to wait 120 days before it can begin recovering its costs through a going

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[28]April 1993 Report and Order, supra at ¶ 133.

[29]Id. at note 354.

forward rate adjustment.[30] Consequently, the operator has two choices: offer the service at a loss for several months (with no hope of recovering the losses) or delay the launch of the new service until the proposed increase has been approved at the local level. The Commission should allow cable operators adding channels to the basic tier to implement the new rate upon 30 days notice, subject to potential refund liability if the rate ultimately is determined to be unreasonable.

The Commission also needs to address the scope of the local review process. Despite initial indications that local review of going forward increases would be limited, the Commission has adopted a policy of virtually unfettered deference to local authorities. The result of this policy is likely to be intrusive and unnecessary demands for information, regulatory delay and, ultimately, inconsistent determinations regarding permitted rate adjustments. Even worse, the failure of the Commission to streamline the local review process raises the possibility that decisions will be tainted by political considerations.[31] One

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[30]The actual regulatory delay may be even longer. For example, if the service is added on January 1, the system cannot even apply for the going forward adjustment until April 1; if the franchising authority takes four months to rule, the operator will have "eaten" the cost of the service for seven months. Moreover, the franchising authority might arbitrarily claim that the operator's Form 1210 is "incomplete," potentially delaying the introduction of the new service indefinitely.

[31]For example, a city council's disagreement with the views expressed by Pat Robertson or Ted Turner could affect the timing and substance of its decision on rate adjustments relating to the Family Channel or TNT. Similarly, a local franchising authority could decide to delay or disapprove a going forward rate

(continued...)